

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RFA No. 223 of 1997.

Judgement reserved on: 3.4.2008.

Date of decision: 4.4.2008.

State Bank of India

..... Appellant.

Vs.

M/s Jamuna Enterprises & ors.

.... Respondents.

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?

For the Appellant : Mr. K.D.Sood, Advocate.

For the Respondents : None.

Kuldip Singh, Judge.

This appeal has been directed against the judgement, decree dated 6.3.1997, passed by learned District Judge, Solan, in Civil Suit No. 25-S/10 of 95/87.

2. The facts in brief are that appellant filed a suit for recovery of Rs.2,65,047.38 against the respondents on the allegations that Sona Ram was one of the partners of M/s Jamuna Enterprises alongwith Yoginder Sethi and Renu Sethi. He died during the pendency of the suit and his legal representatives were brought on record. The appellant-bank had sanctioned a cash credit limit of Rs.1,00,000/- in favour of respondent No.1 on 21.7.1982, which was to be availed by respondents on interest at the rate of 13.5% per annum to be calculated on daily balance with quarterly rests. Sona

Whether the reporters of the local papers may be allowed to see the Judgment?

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Ram executed an agreement of hypothecation on 21.1.1982. The loan was guaranteed by Kailash Prashar and Om Parkash Sahni, for which guarantee deed was executed in favour of the bank. The bank granted a term loan of Rs.1,50,000/- to the respondents on interest at the rate of 12.5% per annum with quarterly rests. The loan amount was to be repaid by the respondents on monthly instalment of Rs.2,000/-. The term loan was taken by the respondents on 8.8.1982. The term loan was also guaranteed by Kailash Prashar and Om Parkash Sahni.

3. The respondents availed the facility of term loan as well as cash credit limit. They confirmed balance by confirmation letter, dated 30.12.1985. The respondents made some payments of the loan amount by instalments but they failed to repay the whole amount with interest. On 31.10.1987, an amount of Rs. 2,65,047.38 remained payable by the respondents to the bank, hence, the bank has filed the suit.

4. The respondents contested the suit. Respondents No. 1, 3, 4 and Sona Ram Sethi, predecessor in interest of respondents No. 2 to 5 filed joint written statement. They have pleaded that interest has not been correctly calculated by the bank. They suffered loss in their business, the bank failed to accede their request to allow them to avail overdraft facility of Rs.10,000/-. The bank is not entitled to recover the amount of guarantee fee and interest thereon. The suit is time barred. The bank is not entitled to charge compound interest with quarterly rests. Om Parkash Sahni adopted the written statement filed by respondent No. 1 etc. Kailash Prashar did not

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contest the suit. On the pleadings of the parties, following issues were framed.

1. Whether the suit is time barred? OPD-6
2. Whether the suit has been filed by a person competent to do so? OPP.
3. Whether the plaintiff-bank had advanced loan to defendants 1 to 4 on the basis of loan documents as alleged? OPP
4. To what rate and amount of interest is the plaintiff-bank entitled to recover? OPP.
5. Whether the plaintiff is entitled to recover Rs.2,65,047.38p or any other amount? OPP
6. Relief.

5. The learned District Judge has decreed the suit on 6.3.1997 for Rs.2,59,000/- with proportionate costs of the suit. It has been ordered that exact amount to be recovered from the respondents shall be determined by adjusting the amount of instalments paid by the respondents towards the satisfaction of the loan amount from time to time. The decree, dated 6.3.1997, has been assailed by the bank in the present appeal.

6. I have heard Mr. K.D. Sood, learned counsel for the appellant and gone through the record. The respondents No. 1, 3, 4, 5 and 9 were proceeded ex-parte on 14.5.1998, but none appeared on behalf of the respondents when the appeal was finally heard. The learned counsel for the appellant has submitted that the learned District Judge in the impugned judgement and decree has not

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determined the controversy between the parties. The learned District Judge has erred in not allowing interest to the bank. The decree is vague. He has submitted that suit of the bank be decreed, as prayed.

7. The operative part of the impugned judgement is as follows:-

“In view of my findings on the aforesaid issues, I accordingly pass a decree of Rs.2,59,000/- in favour of the plaintiff- bank and against the defendants with proportionate costs of the suit. The plaintiff- bank is not entitled to charge guarantee fee from the defendants. The plaintiff bank shall also not be entitled to charge compound interest with quarterly rests and shall calculate the interest as enumerated in para 20 of the judgement. The exact amount to be recovered from the defendants shall be determined by adjusting the amount of instalments paid by the defendants towards the satisfaction of the loan amount from time to time. The decree sheet be drawn. The file after completion be consigned to record room.”

8. In the operative part of the judgement, the learned District Judge has referred that interest be calculated as enumerated in para-20 of the judgement. The perusal of para-20 of the judgement would show that the learned District Judge has not mentioned any amount paid by the respondents to the bank, but in operative part of the impugned judgement direction has been given that the exact amount to be recovered from the respondents shall be determined by adjusting the amount of instalments paid by respondents. Therefore, in absence of determination of amount as per operative part of judgement interest cannot be calculated. The issue No.5 is with respect to recovery of Rs.2,65,047.38 or any other amount. The

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issues No. 3 to 5 have been decided by the learned District Judge in the impugned judgement collectively. The learned District Judge while discussing issues No. 3 to 5 has nowhere recorded a finding that amount of Rs.2,59,000/- is payable by the respondents to the bank. It is not clear from the impugned judgement from where the figure of Rs.2,59,000/- mentioned in the operative part of the impugned judgement has been taken by the learned District Judge.

9. The decree has been defined in Section 2 of the Code of Civil Procedure, 1908. The learned District Judge in the impugned judgement has not determined conclusively the rights of the parties as per their contentions and in terms of Section 2 of the Code. The trial court in the judgement was required to go into all contentious points as per the pleadings, evidence and issues. In the present case, the learned District Judge has not done that exercise. He has kept everything vague in the impugned judgement and decree. In the absence of clear findings on the points raised by the parties, the appellate court is deprived of the benefit of findings of the trial court. The parties in absence of reasons are also deprived of the fact that how the trial court has come to a particular conclusion. In the present appeal, I am purposely not determining the amount as that will deprive the right of the party against whom the finding is recorded. It is in the interest of both the parties that the matter is remanded back to the learned District Judge for deciding the matter after setting aside the impugned judgement and decree for fresh decision on all points.

10. The result of the above discussion the appeal is allowed. The impugned judgement and decree are set-aside and the case is

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remanded back to the learned District Judge for fresh and clear decision after giving notice to the parties. The suit was filed way back on 12.11.1987, hence the learned District Judge is directed to decide the suit expeditiously but before 30th September, 2008. The appellant is directed to appear before the learned District Judge on 21.4.2008. Since nobody has appeared on behalf of the respondents, therefore, learned District Judge shall issue notice to the respondents. The record of the trial court be sent forthwith so as to reach well before the date fixed.

April 4, 2008.
(Hem)

(Kuldip Singh)
Judge.